IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 29134 of 2005(R)

PETITIONER:

THE MANAGER, P.K.S HIGHER SECONDARY
SCHOOL, KANJIRAMKULAM, NEYYATTINKARA, TRIVANDRUM.

BY ADV. SRI.O.V.MANIPRASAD

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY THE
SECRETARY TO GOVERNMENT GENERAL EDUCATION(N)
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR OF EDUCATION,
THIRUVANANTHAPURAM.

3. THE DISTRICT EDUCATIONAL OFFICER,
NEYYATTIKARA, THIRUVANANTHAPURAM.

4. T.MOHAN, KALIYIKETTIA VADAKKATHU PUTHEN
VEEDU, KAJIRAMKULAM P.O., NEYYATTINKARA,
THIRUVANANTHAPURAM.

5. T.S.AJITH KUMAR, VADAKEY CHUDAYAPPATTU
VEEDU, THADATHIKULAM, KANJIRAMKULAM P.O.,
NETTATTINKARA, THIRUVANANTHURAM.

6. J.AJAYKUMAR, THANPONNAKALA,
NIDHIVETTIYA VEEDU, KANJIRAMKULAM P.O,
NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADV. SRI.S.JAYAKRISHNAN
SR. GOVERNMENT PLEADER SMT. M.R. SREELATHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/09/2007, ALONG WITH WPC NO. 29155 OF 2005 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.29134 OF 2005

EXT.P1: COPY OF ORDER DTD 12.09.2005 AS G.O.(RT)NO.4465/2005/G.EDN.

EXT.P2: COPY OF THE ORDER DATED 29.8.02 OF R3 REJECTING THE APPROVAL OF APPOINTMENT OF R6.

EXT.P3: COPY OF THE REQUEST MADE BY R6.

EXT.P3(A): COPY OF THE APPOINTMENT ORDER ISSUED TO R6 AS CLERK IN THE HIGHER SECONDARY SECTION.

EXT.P4: COPY OF ORDER DATED 03.07.2004 OF THE DIRECTOR OF HIGHER SECONDARY EDUCATION.

EXT.P5: COPY OF THE PETITION DATED 13.10.2004 BY THE PETITIONER SUBMITTED BEFORE THE R2.

EXT.P6: COPY OF THE ORDER DATED 17.12.2004 OF R2 .

EXT.P7: COPY OF THE ORDER DATED 21.11.2004 BY R3.

EXT.P8: COPYOF ORDER DATED 13.01.2005 OF R3.

EXT.P9: COPY OF THE ORDER DATED 08.06.2005 OF R2.

EXT.P10: COPY OF ORDER DATED 12.07.2005 BY R3.

EXT.P11: COPY OF G.O.(MS)NO.275/99/G.EDN DATED 09.11.1999.

RESPONDENT'S EXHIBITS

EXT.R6(A): COPY OF APPOINTMENT ORDER ISSUED BY THE MANAGER DTD. 1.8.2005.

EXT.R6(B): COPY OF REPRESENTATION SUBMITTED BY R6 TO THE PETITIONER DATED 19.3.2002.

EXT.R6(C): COPY OF THE REPRSENTATION SUBMITTED BY R6 TO THE PETITIONER DATED 9.5.2003.

EXT.R6(D): COPY OF THE PROCEEDINGS SIGNED BY THE MANAGER, PKS HIGHER SECONDARY SCHOOL, KANJIRAMKULAM DATED 12.7.2004.

EXT.R6(E): COPY OF THE PETITION FILED BY THE R6 RESPONDENT BEFORE THE DEPUTY DIRECTOR OF EDUCATION, THIRUVANANTHAPURAM DATED 2.6.2005.

TRUE COPY

PA TO JUDGE.

S. SIRI JAGAN, J.

W.P.(C)Nos.29134&29155 OF 2005

Dated this the 27th day of September, 2007

JUDGMENT

The manager and two Full Time Menials appointed by him in the PKS Higher Secondary School, Kanjiramkulam, Neyyattinkara, Thirvananthapuram are the petitioners in these two writ petitions. In both these writ petitions, the same order of the Government is under challenge. The same is Ext.P1 in W.P. (c) No.29134/05 and Ext.P10 in the other writ petition. The challenge arises in the following situation.

2. The manager effected a series of appointments in his school without ascertaining existence of any vacancies to accommodate them. Appeals were filed. Ultimately, by Ext.P9 order dated 8.6.05, the Deputy Director of Education, Thiruvananthapuram held that there are two vacancies of Full Time Menials in the school to which three persons namely, Sri. T. Mohanan, Sri. T.S. Ajikumar and Sri. J. Ajayakumar stake claim. None of the three had any preferential right to be appointed to the two posts available. Therefore, the manager was given

discretion to choose two among them for appointment to the two posts. The Deputy Director of Education also directed the Educational Officer to approve such appointment when made. Pursuant thereto, Sri. Ajikumar was accommodated in the vacancy which arose on 1.4.03 and Sri. T. Mohanan was accommodated in the vacancy which arose on 2.6.03 and appointment orders were forwarded to the DEO for approval. In the meantime because of delay in approval, Sri. T. Mohanan filed a petition before the Government, the Government took up the same and passed Ext.P1 order in which the Government directed the manager to make appointments strictly in accordance with G.O.(MS)No.275/99/ G.Edn. dated 9.11.1999. The same is Ext.P1 in W.P.(c) No.29134/05 and Ext.P10 in the other. The manager and M/s. T.S. Ajikumar and T. Mohanan challenge that order in these writ petitions. According to them, Ext.P1 is unsustainable. They would point out that Ext.P11 which is the Government order referred to above has no application to the fact situation at all and in so far as there are only two vacancies available and none of the three candidates has any preferential right to be appointed to those posts, it would be in the absolute discretion of the manager to choose

two out of the three for such appointment.

3. Sri. Ajayakumar, who is the third claimant for appointment to one of the posts, submits that out of the three he was the one who was appointed by the manager first in one of the vacancies which was not approved by the educational authorities and it is thereafter that Sri. Ajikumar and Sri. T. Mohanan were appointed and therefore he should be preferred for one of the posts.

4. I have considered the rival contentions in detail. Ext.P11 Government order in accordance with which in Ext.P1 the Government directed rearrangement of the appointments reads thus:

> "1. It has been brought to the notice of the Government that there are the cases where the leave substitutes are not regularised against permanent/regular vacancy arising in the respective schools, whereas juniors are accommodated against permanent/regular vacancies.
>
> 2. Government are pleased to clarify that the services of leave substitutes will be regularised against the first arising permanent/regular vacancy in the respective schools in the order of seniority."

That can only apply to approved service and not to unapproved service. That being so, I am satisfied to that Ext.P11 order has no application to the fact situation. My task of resolving

the dispute between the three claimants has been made easy by a consensus arrived at among the manager and the three persons. It is now agreed by the said four persons that Sri. T.S. Ajikumar would be accommodated against the vacancy of Full Time Menial which arose on 1.4.2003 and Sri. Mohanan would be accommodated in the vacancy which arose on 2.6.03. Thereafter on 2.1.06 on account of promotion of one Peon in the school there arose a vacancy of peon to which Sri. T.S. Ajikumar can be promoted with effect from 2.1.06 and to the resultant vacancy of Full Time Menial, Sri. J. Ajayakumar can be appointed. In view of the above consensus, I dispose of these two writ petitions with the following directions.

I direct the manager who is the petitioner in W.P.(C) No.29134/05 to forward an appointment order appointing Sri. T.S. Ajikumar as Full Time Menial with effect from 1.4.03 and another appointment order appointing Sri. T. Mohanan as Full Time Menial with effect from 2.6.03. Yet another appointment order promoting Sri. T.S. Ajikumar as Peon in the school with effect from 2.1.06 shall also to be forwarded to the D.E.O. In the resultant vacancy of the Full Time Menial, the Manager shall appoint Sri. J. Ajayakumar and forward the appointment

order to the D.E.O. The above appointment orders shall be forwarded to the D.E.O. within two weeks from today. Within one month from the date of receipt of the appointment orders, the D.E.O. shall pass orders of approval of the said appointments. Consequent to the above, Ext.P1 order shall stand quashed.

S. SIRI JAGAN, JUDGE

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